

**IN THE JUSTICE OF THE PEACE COURT
IN AND FOR THE STATE OF DELAWARE
OFFICE OF THE CHIEF MAGISTRATE**

IN RE:)	C.A. No. JPCM-11-002
RULE 57 REPRESENTATION)	
OF GREENTREE VILLAGE)	
APARTMENTS)	

Decision and Order

In April of 2011, Christopher Foulds, Esq., an attorney involved in several cases where the named plaintiff was Greentree Village Apartments, contacted this office to examine the Form 50 certificates of representation of the entity. After receiving the copies of the forms currently available, Mr. Foulds wrote the Court to express his concern that Greentree Village Apartments was not an entity in good standing in this State and that those individuals representing the entity were not truthful and accurate in the filing of their respective certificates of representation. This office conducted an initial examination of the matter, which included reviewing the current and recently past certificate of representation filings, asking for and reviewing a responsive position of counsel for the entity now acting as landlord in the Greentree Village complex and examining the public record with regard to the entity known as Green Tree Village Apartments.

That initial review led to the conclusion that there was sufficient evidence of misconduct to suspend any existing certificates of representation in anticipation of revocation. Because of the complex nature of the this particular set of facts, the Court, *sua sponte*, scheduled a hearing to provide all interested parties an opportunity to show cause why the privileges under Rule 57 should or should not be revoked. This is the Court's opinion after that hearing.

Non-lawyers generally may not practice law in this state.¹ The Delaware Supreme Court regulates all aspects of the practice of law, including what is and is not the unauthorized practice of law.² Corporations and other artificial entities typically must be represented by counsel in all matters before the Courts of Delaware.³ Recognizing the importance of the Justice of the Peace Court to be available for prompt, efficient, cost-effective and fair adjudication of matters involving smaller monetary values for the people and artificial entities of this State, the Supreme Court instituted Rule 57.⁴ That Rule permits an artificial entity to be represented by an employee

¹ *Delaware Optometric Corporation v. Sherwood*, Del. Supr., 128 A.2d 812 (1957).

² *Id.*

³ *Transpoylmer Industries, Inc. v. Chapel Main Corp.*, Del. Supr., 582 A.2d 936 (1990).

⁴ See Delaware Supreme Court Rule 57.

or officer of that entity, with certain stated limitations. The process whereby an artificial entity obtains and maintains authorization to have an individual represent the entity is regulated by Supreme Court Rule 57 and Justice of the Peace Court Policy Directive 95-152 (revised).

Rule 57 has two distinct purposes. As stated, the first is that it is intended to allow artificial entities easier and less costly access to the Court. Second, however, the Rule is written to protect the Court from unauthorized or inappropriate representation of artificial entities. Under the terms of that Rule, the privileges of a Form 50 holder are dependent upon several factors established to support that second intended goal of the Rule. The organization to be represented must be in good standing and must be either a Delaware artificial entity or one registered to do business in the state.⁵ In the case of the named representative, the person must be an officer or employee of the entity, with few exceptions; the person must not have been disbarred from or currently under suspension from, the practice of law in any jurisdiction; the named agent must not have been convicted of a felony or crime of dishonesty in the prior ten years; and the person must not have been found to have engaged in the unauthorized practice of law.⁶ The veracity of these matters is ensured by the submission of the certificate of representation, which is an affidavit.⁷ For further protection of the Court and the process, the Rule and the Legal Memorandum require artificial entities and their agents to timely inform the Chief Magistrate's office of changes in representation or status of the artificial entity.⁸

Those entities and agents that fail in any of their obligations to the Court are subject to a range of possible penalties. First, the Rule provides that a certification presented that contains false or fraudulent information shall be forwarded by the Chief Magistrate to the Department of Justice and the Board on the Unauthorized Practice of Law.⁹ Second, both the entities and the agents are subject to the sanctions contained in Justice of the Peace Court Civil Rule 11.¹⁰ Finally, the Chief Magistrate, in his or her sole discretion, may, upon referral of a matter to his or her attention, revoke the agency.¹¹

In addressing these matters, the Court has adopted some level of adherence to the principles behind the Delaware Lawyers Rules of Professional Conduct.¹² While the Court is mindful that Form 50 representatives may not practically be held to all the requirements of those rules, the nature of the limited right to practice before this Court afforded by a Form 50 holder is such that some basic standards must be met. Form 50 agents may be reasonably required to

⁵ Delaware Supreme Court Rule 57(c)(2).

⁶ Delaware Supreme Court Rule 57 (c)(3).

⁷ Delaware Supreme Court Rule 57 (c).

⁸ Delaware Supreme Court Rule 57 (c)(7).

⁹ Delaware Supreme Court Rule 57 (c)(8).

¹⁰ Id.

¹¹ Delaware Supreme Court Rule 57 (c)(9).

¹² See *In Re: Rule 57 Representation by Lee Herbert*, C.A. No. JPCM-11-001, August 2, 2011.

maintain candor with the Court¹³, honest dealings with parties and witnesses¹⁴, and truthfulness in statements to others¹⁵ in addition to the specific requirements contained in Supreme Court Rule 57.

Though the Supreme Court has left entirely to the discretion of the Chief Magistrate how to deal with these matters, such discretion may be arbitrarily exercised without adoption of some standards of evaluation and review. Since the standards of behavior required of Form 50 holders is analogous, in some limited fashion, to those with the full right to practice law in this jurisdiction, it only follows that this Court should use similar standards by which to evaluate and sanction alleged breaches of expected behavior. As such, this Court explicitly adopts the following standards for accepting, reviewing and sanctioning alleged breaches of required behavior by Form 50 agents: An initial outside complaint or referral by a judge of this Court shall be considered on its face to determine whether there is a reasonable inference of misconduct on the part of the Form 50 agent or the entity that they represent¹⁶. Upon a finding of such a reasonable inference, the Court will conduct a further examination of the matter, reviewing public source documents and requesting information from interested parties. After this initial investigation, if the Court finds probable cause that there was misconduct¹⁷, it will suspend the privileges of the entity or the agent involved. A finding of probable cause will spur the scheduling of a hearing, at which the agent or entity will be afforded an opportunity to be heard, to show cause why the privilege of Form 50 representation should not be revoked. The Court will evaluate any evidence presented on the basis of a preponderance of the evidence standard,¹⁸ having to be convinced that, more likely than not, the actions of the entity or agents are a breach of the standards required under Rule 57 and/or the broader ethical standards stated above.

Before turning to the specific facts of this case, it is important to note that there have been several administrative modifications to the processing of certificates of representation that may have some bearing on this particular matter. Perhaps most important was the realization of the office of the Chief Magistrate between 2005 and 2008 that the use of these forms by property management companies that managed large apartment complexes was sometimes problematic. While clearly a situation provided for in Rule 57 and accounted for on the Form 50s themselves, Justice of the Peace Court staff member charged with processing these noticed that, very often employees of such management companies were not identifying themselves as agents of the

¹³ Delaware Lawyers' Rules of Professional Conduct 3.3.

¹⁴ Delaware Lawyers' Rules of Professional Conduct 3.4.

¹⁵ Delaware Lawyers' Rules of Professional Conduct 4.1.

¹⁶ This is similar to the standard employed by the Office of Disciplinary Counsel to initially evaluate a complaint about a member of the Bar.

¹⁷ This is the standard required of the Professional Review Committee in determining lawyer misconduct.

¹⁸ This is different from what is required in attorney sanction cases, which requires a clear and convincing evidence standard. The difference in standards can be attributed to the difference between a law practitioner and a person who is granted a limited ability to practice before this Court. Form 50 agents may, not, under the rule, have this function as their primary responsibility to the company they represent, so no loss of livelihood is as likely as with the sanctioning of attorneys.

management company. Instead, the forms were filed with the name of the apartment complex indicated as the artificial entity and the agent simply noted that they were the property manager. To avoid confusion, when the Court issued a modification to Policy Directive 95-152 in 2008, that document directed Form 50 holders to avoid the practice and register as agents of the property management company rather than as agents of the property itself.


The present matter began with the filing of a letter of complaint with the office of the Chief Magistrate by Mr. Christopher Foulds, Esq., claiming that the entity litigating in this Court pursuant to Supreme Court Rule 57 under the name "Greentree Village Apartments" does not exist as a legitimate artificial entity and that any certificates of representation for that body were fraudulently submitted. Mr. Foulds provided a certification that "Greentree Apartments L.L.C." had been an entity in good standing from formation in 1995 until 2002. He had been involved in litigation in this Court and had encountered significant frustration in attempting to determine the actual entity that he was litigating against. He submitted several Form 50 copies from various years since 2002 which indicated in their completion that the entity "Greentree Village Apartments" was a Delaware limited liability company.

Upon receipt of this letter, the Court examined the certificates and requested information from Michael Morton, Esq., who represents the management company currently responsible for acting as landlord for the physical location known as "Green Tree Village Apartments." In his response, Mr. Morton laid out the ownership and management responsibility history of the apartments, in his letter, a copy of which is attached and incorporated into this decision. In total, from the time the property was developed in 1987 until the time of consideration of this matter, there have been five artificial entities that have owned the property and at least two property management companies involved since Mr. Morton's representation of cases involving the property. Of the five ownership entities, three have had the name "Greentree" somewhere in their company name.

As a result of this response, the Court scheduled a hearing to determine whether there was some fraudulent behavior related to the filing of the Form 50's. None of the testimony presented provided a much clearer picture of the reasons why the name Greentree Village Apartments has remained ensconced in the submission of the Form 50's, other than the existence of the apartment complex as a physical location. There is sufficient evidence to show that the forms contain wrong information. There is also some testimony that Forms have just been filed this way as a rote administrative process on the part of those involved in this apartment complex. While it is clear that the forms were filed throughout several years with improper designation of the correct entity, no proof was shown that there was an effort to deceive or otherwise mislead the Court or litigants. Barring any such evidence, the Court can only hypothesize what happened in this case, based on the practices employed in the processing of Form 50 certificates of representation prior to the modification of the applicable policy directive in 2008. While it may

be helpful for the office of the Chief Magistrate to do so on an administrative basis, if only as a clarifying exercise intended to avoid future similar circumstances, there is simply not sufficient evidence to lead this Court to the conclusion that there was improper motive or action in this case. None of the individuals or artificial entities involved in this property will have their privileges removed or denied in the future based on the facts of this matter.

IT IS SO ORDERED this 28th day of November, 2011.



Alan G. Davis
Chief Magistrate